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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,500	12/12/2003	Demetrius Bagley	02700-0711	1614

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EXAMINER

RYCKMAN, MELISSA K

ART UNIT	PAPER NUMBER
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3773

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02/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/734,500

Applicant(s)

BAGLEY ET AL.

Examiner

Melissa Ryckman

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on received on 9/28/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23,24,33,34,37,38 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23,24,33,34,37,38 and 41-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/28/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/28/07 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 23, 24, 34, 37, 38, 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rydell (US 5163942) in view of Utsugi (US 4198960), and further in view of Bates et al. (U.S. Patent No. 6,527,781).

Rydell teaches a retrieval device comprising:

- A hollow handle (112)
- An elongate sheath (124) extending from the handle

- a three-dimensional basket (128), and a first actuator (146) configured to extend a first end, and to simultaneously retract another end of the basket, such that the midpoint of the basket is displaced rearward (fig. 8)
- Wherein the first actuator comprises a wheel (146)
- A second actuator (132) configured to simultaneously extend or retract the legs of the basket such that the basket translates forward or rearward depending on the direction of manipulation of the second actuator
- Wherein the second actuator comprises a slide (132) that is actuated by axially translating the slide
- the hollow handle having first (50) and second (150) longitudinal slots; a slide actuator (132) that can be axially displaced along the handle via the first slot (50); opposed first and second gear racks (204, 206) disposed within the handle and supported by the slide actuator;
- a rotatable actuator (146) that can be axially displaced along the handle via the second longitudinal slot, the rotatable actuator being mounted to the slide actuator and comprising a gear (208) that engages the first and second gear racks (fig. 8);

Rydell fails to teach the basket having at least three legs, each leg having a proximal end and a distal end, the distal end of each leg being coupled to a tip member; wherein the device is configured to extend a first and a second leg and to

simultaneously retract a third leg of the basket and the first and second legs are displaced away from each other to facilitate maneuvering the basket around an object.

Utsugi teaches a retrieval device with a basket (35) having at least three legs (33), each leg having a forward end that is coupled at a junction (34) of the basket; wherein the device is configured to extend a first and a second leg and to simultaneously retract a third leg of the basket and the first and second legs are displaced away from each other to facilitate maneuvering the basket around an object (fig. 7) in order to aid in trapping an object. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Rydell as taught by Utsugi in order to aid in trapping an object.

The combination of Rydell and Utsugi fails to teach the following:

- a first operating member having a proximal end positioned within the handle and a distal end positioned adjacent the distal end of the sheath such that the first operating member extends from within the handle and into the sheath;
- a second operating member having a proximal end positioned within the handle and a distal end positioned adjacent the distal end of the sheath such that the second operating member extends from within the handle and into the sheath;
- the proximal end of first and second legs being connected to the distal end of the first operating member, and the proximal end of a third leg being connected to the distal end of the second operating member;
- wherein the tip member comprises a hole, each leg being secured to the tip member by inserting the forward end of the leg into the hole and crimping the tip member.

Bates teaches a medical retrieval device comprising a first operating member (9) having a proximal end positioned within the handle (12) and a distal end positioned adjacent the distal end of the sheath (14) such that the first operating member extends from within the handle and into the sheath (fig. 1b); a second operating member (22) having a proximal end positioned within the handle (12) and a distal end positioned adjacent the distal end of the sheath (14) such that the second operating member extends from within the handle and into the sheath (fig. 1b); the proximal end of first and second legs (32, 34) being connected to the distal end of the first operating member (23), and the proximal end of a third leg (28) being connected to the distal end of the second operating member (22) in order to provide structural support to the basket members for actuation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Rydell and Utsugi as taught by Bates in order to provide structural support to the basket members for actuation.

Bates teaches a medical retrieval device comprising a three dimensional basket formed of legs joined at a junction (cap) by soldering, gluing or any means known in the art in order to provide an atraumatic wire basket. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Rydell and Utsugi to provide the junction of Bates in order to provide an atraumatic wire basket.

Claims 33 and 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Rydell, Utsugi and Bates as applied to claims 23 and 41 above, and

further in view of McClellan et al. (US 2002/0019594). The combination of Rydell, Utsugi and Bates teach all limitations of preceding dependent claims 23 and 41, but fails to teach wherein the legs are formed of shape memory material. McClellan teaches a surgical retrieval device wherein the legs are formed of shape memory material in order to aid in releasing the basket from its radially restrained configuration for insertion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Rydell, Utsugi and Bates with shape memory material in order to aid in releasing the basket from its radially restrained configuration for insertion.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Rydell, Utsugi and Bates as applied to claim 41 above, and further in view of Fleury, Jr. (US 4326530). The combination of Rydell, Utsugi and Bates teaches all limitations of preceding dependent claim 41, but fails to teach wherein the operating members comprise tubes. Fleury Jr. teaches a medical retrieval device comprising tubular operating members (27) in which basket members are disposed and secured within the tubes via crimping in order to mechanically secure the basket members to the operating members. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Rydell, Utsugi and Bates with tubular operating members as taught by Fleury Jr. in order to order to mechanically secure the basket members to the operating members via crimping.

Response to Arguments

Applicant's arguments filed 9/28/07 have been fully considered but they are not persuasive. The applicant generally argues the following:

- Utsugi does not teach the first and second legs simultaneously retract a third leg of the basket.
- Bates does not have more than one operating member

The examiner respectfully disagrees with the applicant. Utsugi is capable of retracting a third leg of the basket simultaneously using the first and second legs. The applicant does not teach structure that is necessary to simultaneously retract the first and second legs, the apparatus of Utsugi is capable of performing the function as required in the claims. Bates teaches two operating members, as described above, the operator members are element 9 and element 22 as shown in Fig. 3A and Fig. 1F.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR



(JACKIE) TAN-UYEN HO
SUPERVISORY PATENT EXAMINER